



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1067]

RIN 1625-AA00

Safety Zone; Hurricanes and Other Disasters in South Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone within the Sector Miami Captain of the Port Zone. This action is necessary to provide for the safety of persons and vessels in the event of reduced or restricted visibility due to hurricanes and other disasters. This action is intended to restrict port operations in the event of hurricanes and other disasters. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-1067 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Mara Brown, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port Miami (COTP) has determined that the hazards associated with the reduced or restricted visibility which can occur during hurricanes and other disasters constitute a safety concern for anyone within the proposed safety zone. The purpose of the proposed rule is to ensure the safety of life on navigable waters of the United States by restricting port operations in the event of severe weather conditions or disasters, including hurricanes.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the navigable waters of the Sector Miami COTP zone during disasters and other specified severe weather conditions. This proposed rule would restrict port operations and vessel traffic during disasters and severe weather, to include hurricanes, when certain port conditions are set by the COTP. The proposed rule would give the COTP flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and allows for expediting resumption of the Maritime Transportation

System following disasters and severe weather.

Hurricane Port Conditions (WHISKEY, X-RAY, YANKEE, and ZULU) are standardized states of operation instituted by the COTP and shared with all major ports, facilities, and members of the Maritime Transportation System. The intermodal and dynamic nature of the Maritime Transportation System requires all parties to comply with safety and security procedures when faced with the challenges of hurricanes and other disasters.

Notice of Hurricane Port Conditions and their requirements will be given via Marine Safety Information Bulletins, online at <http://homeport.uscg.mil/miami>, Broadcast Notice to Mariners, and Severe Weather Advisory Team meetings.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new

regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

We expect the economic impact of this proposed rule to be not significant for the following reasons: (1) vessel traffic and facilities will be impacted by this rule only during limited times while heavy weather is expected to impact the Sector Miami Captain of the Port Zone; (2) vessel traffic would be secured only during port conditions Yankee and Zulu, and only in port areas potentially affected by gale force winds; and (3) the Coast Guard would issue updates on <http://homeport.uscg.mil/miami>, VHF channel 16, and during Severe Weather Advisory Team meetings.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described

in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones implemented during hurricanes or other heavy weather events. Normally such actions are categorically excluded from further review under paragraph

34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary Record of Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal

Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.785 to read as follows:

§ 165.785 Safety Zone; Hurricanes and Other Disasters in South Florida.

(a) **Regulated Areas.** All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Miami Florida, as described in 33 CFR 3.35-10, during specified conditions.

(b) **Definitions.** (1) The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating

Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami, in the enforcement of the regulated areas.

(2) Port Condition WHISKEY means condition set by the Captain of the Port when weather advisories indicate sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 72 hours.

(3) Port Condition X-RAY means condition set by the Captain of the Port when weather advisories indicate sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 48 hours.

(4) Port Condition YANKEE means condition set by the Captain of the Port when weather advisories indicate that sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 24 hours.

(5) Port Condition ZULU means condition set by the Captain of the Port when weather advisories indicate that sustained gale force winds (39-54 mph/ 34-47 knots) from a tropical or hurricane force storm are predicted to make landfall at the port within 12 hours.

(c) Regulations. -- (1) Port Condition WHISKEY. All vessel and port facilities must exercise due diligence in preparation for potential storm impacts. Slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm upon the anticipation of the setting of Port Condition X-RAY. Ports and waterfront facilities shall begin removing all debris and securing potential flying hazards. Container stacking plans shall be implemented. Waterfront facilities that are unable to reduce container stacking height to no more than four high must submit a container stacking protocol to the Captain of the Port (COTP).

(2) Port Condition X-RAY. All vessels and port facilities shall ensure that potential flying debris is removed or secured. Hazardous materials/pollution hazards must be secured in a

safe manner and away from waterfront areas. Facilities shall continue to implement container stacking protocol. Containers must not exceed four tiers, unless previously approved by the COTP. Containers carrying hazardous materials may not be stacked above the second tier. All oceangoing commercial vessels greater than 500-gross tons must prepare to depart ports and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. Vessels that are unable to depart the port must contact the COTP to request and receive permission to remain in port. Vessels with COTP's permission to remain in port must implement their pre-approved mooring arrangement. Terminal operators shall prepare to terminate all cargo operations. The COTP may require additional precautions to ensure the safety of the ports and waterways.

(3) Port Condition YANKEE. Affected ports are closed to inbound vessel traffic. All oceangoing commercial vessels greater than 500-gross tons must have departed designated ports within the Sector Miami Captain of the Port Zone. Appropriate container stacking protocol must be completed. Terminal operators must terminate all cargo operations not associated with storm preparations: cargo operations associated with storm preparations include moving cargo within or off the port for securing purposes, crane and other port/facility equipment preparations, and similar activities, but do not include moving cargo onto the port or vessel loading/discharging operations unless specifically authorized by the COTP. All facilities shall continue to operate in accordance with approved Facility Security Plans and comply with the requirements of the

Maritime Transportation Security Act (MTSA).

(4) Port Condition ZULU. All port waterfront operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Coast Guard Port Assessment Teams will conduct final port assessments.

(5) Emergency Restrictions for Other Disasters. Any natural or other disasters that are anticipated to affect the Sector Miami Captain of the Port zone will result in the prohibition of commercial vessel traffic transiting or remaining in the port or facility operations.

Dated: April 11, 2017

J.H. D. Solomon,
Captain, U.S. Coast Guard,
Acting Captain of the Port Miami.

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